(1) Supreme Court, U.S.
FILED
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No.

IN THE

Supreme Court of the United States

John D. Goelz

v.

THE PAUL REVERE LIFE INSURANCE COMPANY
and
HEREIN NAMED PARTIES

On Petition For Writ of Certiorari
To The United States Court of Appeals
For the Fourth Circuit

PETITION FOR WRIT OF CERTIORARI

John D. Goelz
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43 pp

QUESTIONS PRESENTED FOR REVIEW

1. Did the United States District Court for the Western District of North Carolina error in neglecting to insure the Court had exclusive jurisdiction before assuming jurisdiction based upon a Removal Petition?

2. Did the United States District Court for the Western District of North Carolina error in neglecting to examine the Removal Petition promptly to insure that a federal question clearly appeared on the face of Petitioner's complaint before assuming jurisdiction based upon a Removal Petition?

3. Did the United States District Court for the Western District of North Carolina error in neglecting to examine the Removal Petition promptly to insure that diversity of citizenship existed in Petitioner's complaint clearly stating the minimal amount in controversy before assuming jurisdiction based upon a Removal Petition?

QUESTIONS PRESENTED FOR REVIEW

4. Did the United States District Court for the Western District of North Carolina error in neglecting to provide Petitioner with findings of fact and conclusions of law on which the Court based it's decision to assume jurisdiction and not remand Petitioner's cause of action to the state court?

5. Did the United States District Court for the Western District of North Carolina error in looking "beyond the four corners" of Petitioner's cause of action to justify jurisdiction and removal from state to federal court?

6. Did the United States Court of Appeals for the Fourth Circuit error in neglecting to review the record and the final appealable Order of the United States District Court as to substantial prejudices to Petitioner and continued jurisdictional challenges raised by the Petitioner?

7. Does the Supreme Court of the United States have the authority to clarify the ambiguity of wording found in the statutes?

LIST OF NAMED PARTIES

1. PROVIDENT COMPANIES INCORPORATED aka THE PAUL REVERE LIFE INSURANCE COMPANY, their agents and assigns
   18 Chestnut St.
   Worcester, Ma. 01608-1528

2. PROVIDENT LIFE & ACCIDENT INSURANCE COMPANY & Affiliates, their agents and assigns
   Chattanooga, Tenn. 37401

3. PROVIDENT COMPANIES INCORPORATED, their agents and assigns
   1 Mountain Square
   Chattanooga, Tenn. 37402

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JURISDICTION

Petitioner has exhausted all judicial remedies, jurisdiction is perfected to the Supreme Court of the United States pursuant to Article III, Section 2, clause 1 and clause 2 of the Constitution of the United States of America, Title 28 U.S.C.A., Section 1254 (1), upon final order of the Fourth Circuit Court of Appeals dated August 8, 2001, upon timely filing of a Petition for Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit.

STATEMENT OF THE CASE

This case involves the improper removal of Petitioner's civil cause of action in tort, commenced in the Superior Court of Mecklenburg County, North Carolina, subsequently removed to the United States District Court for the Western District of North Carolina, Charlotte Division. Petitioner consistently objected to the removal on subject matter grounds, not only to the United States District Court, but also to the United States Court of Appeals for the Fourth Circuit.

On September 3, 1999, Petitioner filed a civil cause of action in tort for damages in the Superior Court of Mecklenburg County, North Carolina, and all defendants were properly served by and through defendants' process agent, CT Corporation Systems, Registered with the North Carolina Secretary of State.

On October 8, 1999, defendants filed a Petition for removal of Petitioner's civil cause of action in the United States District Court for the Western District of North Carolina, Charlotte Division.

On November 5, 1999, Petitioner filed a Motion to Remand in the United States District Court, as notice to said court of jurisdictional problems with defendants removal petition. Throughout the record, Petitioner continued to challenge the court's subject matter jurisdiction.

The record below clearly shows that Petitioner continually challenged the subject matter

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jurisdiction of the United States District Court based on five issues, (1) Petitioner, upon information and belief, does not believe that the United States properly obtained exclusive jurisdiction to warrant subject matter jurisdiction; (2) Petitioner's civil cause of action stated no federal question on the face of Petitioner's complaint even though the Defendants' counsel attempted to justify the removal by fabricating a federal question; (3) Petitioner's civil cause of action did not allow a removal based upon diversity of citizenship in that Petitioner's complaint did not state the minimal jurisdictional amount and exceed the sum of $75,000, exclusive of interest and costs; (4) Petitioner's civil cause of action could not be commenced in the United States District Court as an original action to justify supplemental jurisdiction; and (5) the face of Petitioner's civil cause of action does not state a federal question under Employee Retirement Income Security Act.

On October 21, 2000, Petitioner's complaint was dismissed with prejudice by the United States District Court for the Western District of North Carolina, Charlotte Division "for failure to prosecute."

Petitioner states that between September 3, 1999, and October 21, 2000, the United States District Court for the Western District of North Carolina, Charlotte Division, neglected to prove by any

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findings of facts or conclusions of law proving said Court had exclusive jurisdiction or subject matter jurisdiction as to a federal question or diversity of citizenship.

On January 11, 2001, Petitioner filed a Notice of Appeal in the United States Court of Appeals for the Fourth Circuit as to the United States District Court's Order dismissing with prejudice Petitioner's civil cause of action in tort.

On June 20, 2001, The United States Court of Appeals, in an unpublished non-binding opinion, affirmed the judgment of the United States District Court, totally ignoring the issues raised by the Petitioner as to exclusive, federal question, or diversity of citizenship jurisdiction.

On June 27, 2001, Petitioner prepared a Motion for Review En Banc, and filed said Motion with the United States Court of Appeals for the Fourth Circuit.

Petitioner received an Order from the United States Court of Appeals for the Fourth Circuit dated August 8, 2001, entitled "On Petition for Re-Hearing En Banc", denying Petitioner's Motion to Review En Banc.

REASONS FOR GRANTING THE PETITION

The decision of the United States District Court for the Western District of North Carolina, Charlotte Division, and the affirmation of that decision by the United States Court of Appeals for the Fourth Circuit, is in extreme conflict with prior decisions of several other United States Courts of Appeals on the same important matter of exclusive, federal question, and diversity of citizenship issues previously decided by those Courts.

The matters of exclusive, federal question, and diversity of citizenship jurisdictional issues are in conflict with clearly established decisions of the Supreme Court of the United States. The United States District Court for the Western District of North Carolina, Charlotte Division, and the United States Court of Appeals for the Fourth Circuit have so departed from the accepted and usual course of judicial proceedings and have sanctioned such a departure by the lower United States District Court as to call for an exercise of the Supreme Court's supervisory power, and will cause uncertainty and confusion as to a rational understanding of previously decided cases and clearly established law.

Subject matter jurisdiction goes to the heart of Petitioner's Petition for Writ of Certiorari. Both the United States District Court and the Fourth Circuit Court of Appeals totally circumvented the issues of

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jurisdiction raised in the United States District Court.

Petitioner's request seeking Certiorari Review by the Supreme Court of the United States inquires as to the justification for removal of Petitioner's state court action to the federal venue.

Defendants' petition (notice for removal) filed on October 8, 1999, attempted to justify removal from the state Superior Court of Mecklenburg County, North Carolina to the United States District Court for the Western District of North Carolina, Charlotte Division, by "fabricating" subject matter jurisdiction under Title 28 U.S.C.A., Section 1331, 1332, 1367, 1441, and Title 29 U.S.C.A., Section 1132.

The United States District Court's error in neglecting to "examine the notice 'petition for removal' promptly" pursuant to Title 28 U.S.C.A., Section 1446 (c) (4), and "summarily remand" Petitioner's complaint to the Superior Court of Mecklenburg County, North Carolina, was prejudicial to Petitioner and further caused a needless delay in litigation.

The Supreme Court of the United States, as recent as 1998, in the case of Steel Co. aka Chicago Steel & Pickling Co. vs. Citizens for a Better Environment 523 U.S. 8; 118 S. Ct. 1003; 140 L. Ed. 2d 210, "declined to endorse "the doctrine of hypothetical jurisdiction" under which several Courts of Appeals have found it proper to proceed immediately to the

merits questioned despite jurisdictional objections. That doctrine carries the courts beyond the bounds of authorized judicial action and thus offends fundamental separation-of-powers principles."

The Supreme Court went on to say in Steel Co. "in a long and venerable line of cases, this Court has held that, without proper jurisdiction a court cannot proceed at all, but can only note the jurisdictional defects and dismiss the suit (remand the case) . See e.g., Capron vs. Van Noorden, 6 U.S. 126, 2 Cranch 126, 2 L. Ed. 229; Arizonans for official English vs. Arizona, 520 U.S. 43, 137 L. Ed. 2d 170, 117 S. Ct. 1055, 1997 U.S. Lexis 1455. Bell vs. Hood, Supra; National Railroad Passenger Corp. vs. National Assn. Of Railroad Passengers, 414 U.S. 453, 465, n. 13, 38 L. Ed. 2d 646, 94 S. Ct. 690; Norton vs. Mathews, 427 U.S. 524, 531, 49 L. Ed. 2d 672, 96 S. Ct. 2771; Secretary of Navy vs. Adrech, 418 U.S. 676, 678, 41 L. Ed. 2d 1033, 94 S. Ct. 3039 (per curiam); United States vs. Augenblick, 393 U.S. 348, 21 L. Ed. 2d 537, 89 S. Ct. 528; Philbrook vs. Glodgett, 421 U.S. 707, 721, 44 L. Ed. 2d 525, 95 S. Ct. 1893; and Chandler vs. Judicial Council of Tenth Circuit, 398 U.S. 74, 86-88, 26 L. Ed. 2d 100, 90 S. Ct. 1648, Distinguished. For a court to pronounce upon a law's meaning or constitutionality when it has no jurisdiction to do so is, by very definition, an ultra virus act."

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"We decline to endorse such an approach (hypothetical jurisdiction) because it carries the courts beyond the bounds of authorized judicial actions and thus offends fundamental principles of separation of powers. This conclusion should come as no surprise, since it is reflected in a long and venerable line of cases. Without jurisdiction the court cannot proceed at all in any cause. Jurisdiction is power to declare the law, and when it ceases to exist, the only function remaining to the court is that of announcing the fact and dismissing the cause." Ex parte McCardle, 74 U.S. 506, 7 Wall. 506, 514, 19 L. Ed. 264 (1869). "On every writ of error or appeal, the first and fundamental question is that of jurisdiction, first, of this court, and then of the court from which the record comes. This question the court is bound to ask and answer for itself, even when not otherwise suggested, and without respect to the relation of the parties to it." Great Southern Fire Proof Hotel Company vs. Jones, Supra, 177 U.S. 449 at 453. The requirement that jurisdiction be established as a thresh hold matter "springs from the nature and limits of the judicial power of the United States" and is "inflexible and without exception" Mansfield, Ct. @ L. M. R. Co. vs. Swan, 111 U.S. 379, 382, 28 L. Ed. 462, 4 S. Ct. 510 (1884)."

The Supreme Court of the United States should clearly define "examine the notice **promptly**" in Title 28 U.S.C.A., Section 1446 (c) (4) to eliminate

extensive delays in determining the resulting Order to remand or not to remand to the state court.

In Petitioner's case, the delay was in excess of four months, causing unnecessary delay and prejudice. Even after the delay, the United States District Court neglected to provide any findings of fact or conclusions of law in which to support the removal.

Regardless of whether or not Petitioner filed a motion to remand, the United States District Court clearly lacks subject matter jurisdiction and a justiciable controversy as required under Article III, Section 2 of the Constitution of the United States of America.

The "Commentary on 1988 Revision of Section 1446" by David D. Siegel, found in Title 28 U.S.C.A., Section 1446 after the quoted context of Section 1446, clearly states that any removal must conform to F.R.C.P. Rule 11 and 8 (a).

David D. Siegel states that the "notice of removal signed pursuant to Rule 11" (1446 (a)) authorizes sanctions for a paper whose averments are not "well grounded in fact and....warranted by....law."

Mr. Siegel concluded that the "petition state 'the facts' that justify removal" from the general pleading mandate of Rule 8 (a).

As seen in defendants removal petition and throughout the record, no facts or evidence are ever presented to justify the United States District Court

sustaining a removal and allowing the defendants to proceed to the merits.

To allow this departure of clearly established law and procedure, is certainly denying Petitioner, and would certainly deny future litigants due process and equal protection of the law.

Defendants' "petition for removal" went on to attempt to justify removal under a "federal question," Title 28 U.S.C.A., Section 1331. Nowhere on the face of Petitioner's complaint does a federal question appear to validate an "original action" which could be heard in the United States District Court.

In the case of Fajen vs. Foundation Reserve Ins. Co. Inc. 683 F. 2d 331, the Tenth Circuit Court of Appeals stated [1] the threshold issue on this appeal is whether removal jurisdiction is proper. Removal statutes are to be strictly construed, Shamrock Oil & Gas Corp. vs. Sheets 313 U.S. 100, 108-09, 61 S. Ct. 868, 872, 85 L. Ed. 1214 (1941), and all doubts are to be resolved against removal, Greenshieds vs. Warren Petroleum Corp., 248 F. 2d 61, 65 (10th Cir.), Cert. Denied, 355 U.S. 907 78 S. Ct. 334, 2 L. Ed. 2d 261 (1957). This Circuit has held that to support removal jurisdiction, "the required federal right or immunity must be an essential element of the Plaintiff's cause of action, and that the federal controversy must be 'disclosed upon the face of the complaint, unaided by the answer or by the petition

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for removal.' " Madsen vs. Prudential Federal Savings & Loan Assn., 635 F. 2d 797, 800 (10th Circ. 1980) (Citing Gully vs. First National Bank, 299 U.S. 109, 113, 57 S. Ct. 96, 81 L. Ed. 70 (1936)), Cert. Denied, 451 U.S. 1018, 101 S. Ct. 3007, 69 L. Ed. 2d 389 (1981); See also Oklahoma ex rel Wilson vs. Blankenship, 447 F. 2d 687, 691-92 (10th Cir. 1971), Cert denied, 405 U.S. 919, 92 S. Ct. 942, 30 L. Ed. 2d 787 (1972).

Clearly, the defendants did not provide the United States District Court with any set of facts or evidence in the removal petition, to warrant removal under Title 28 U.S.C.A., Section 1331. The court's error, in not examining the (Notice) petition for removal promptly to assure subject matter jurisdiction, caused needless prejudice and delay as to Petitioner's right to choice-of-form.

Defendants' petition for removal attempted to justify removal under "diversity of citizenship" Title 28 U.S.C.A., Section 1332. The court's error, in not examining the (Notice) petition for removal promptly to assure subject matter jurisdiction, caused further prejudice and delay as to Petitioner.

Although it is true that defendants were diverse and of different states, defendants failed to provide any set of facts or evidence to prove an amount in controversy exceeding $75,000. Nowhere on the face of Petitioner's complaint or in the request for relief can any affirmative statement be found as to the

actual amount in controversy.

Complete diversity of citizenship is lacking in Petitioner's complaint and cannot be assumed or fabricated by the desire of the defendants. The Supreme Court of the United States made the prerequisite for diversity perfectly clear as to the federal court's jurisdiction over non-federal claims in the decision of Aldinger vs. Howard 427 U.S. 1, Zahn vs. International Paper Co. 414 U.S. 291, and Owen Equip. & Erection Co. vs. Kroger 437 U.S. 365, 98 S. Ct. 2396, 57 L. Ed. 2d 274 (1978), and E.g., Insurance Corp. of Ireland vs. Compagnie des Bauxites de Guinee, 456 U.S. 694, 102 S. Ct. 2099, 72 L. Ed. 2d 492 (1982).

In Snow vs. Ford Motor Co. 561 F. 2d 787, the Ninth Circuit Court of Appeals stated "And, if a Plaintiff cannot aggregate to fulfill the jurisdictional amount requirement of section 1332, then neither can a defendant who invokes federal jurisdiction under the removal provisions of section 1441. This conclusion follows from the well-settled rule that, in the absence of a specific statutory exception, a federal court can exercise removal jurisdiction over a case **only** if it would have had jurisdiction over it as originally brought by the Plaintiff. See 28 U.S.C., Section 1441 (a); In re Dunn 212 U.S. 374, 384, 29 S. Ct. 299, 53 L. Ed. 558 (1909); Southern Pac. Co. vs.

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McAdoo, 82 F. 2d 121, 121 (Ninth Cir. 1936); DeCarlo vs. Parrant City Bd. of Educ., 473 F. 2d 1026, 1027 (Fifth Cir. 1973); Sabin vs. Home Owners Loan Corp., 147 f. 2d 653, 655-56 (Tenth Cir. 1945); State Tax Comm'n vs. Union Carbide Corp., 386 F. Supp. 250, 253 (D. Idaho 1974) (Anderson J.); Tennessee ex rel Davis vs. Market St. News, 357 F. supp. 74, 78 (E. D. Tenn. 1973). See generally 1A J. Moore, Moores Federal Practice ¶0.157 [5] (2d ed. 1976).

In American Juris Prudence 2d, Volume 32A, Sec. 1148 @ page 444, the authors clearly state "The basis of the amount in controversy requirement as a prerequisite to the jurisdiction of a Federal District Court is purely statutory, ...however, starting with the original legislation establishing the lower federal courts, a minimum dollar amount has been imposed as a prerequisite to jurisdiction of the Federal District Courts of cases based on diversity of citizenship."

Section 1149 states "the statute granting jurisdiction to the Federal District Court of actions between citizens of different states requires that the matter in controversy exceed the sum or value of $50,000 (now $75,000) exclusive of interest and costs. Thus, mere diversity of citizenship does not confer jurisdiction in the absence of the required amount in

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controversy." Mexican Nat'l R. Co. vs. Davison 157 U.S. 201, 39 L. Ed 672, 15 S. Ct. 563.

In further attempting to circumvent state court jurisdiction, defendants attempted to justify removal under Title 28 U.S.C.A., Section 1367 "supplemental jurisdiction." The court's error, in not examining the (Notice) removal petition promptly, the court would have realized that supplemental jurisdiction is irrelevant. Again, since the face of Petitioner's complaint does not invoke original federal jurisdiction by way of a federal question or diversity of citizenship, Section 1367 does not apply. V. B. Holdings Inc. vs. White S.D.N.Y. 1992, 144 F.R.D. 42 "original jurisdiction within meaning of statute governing supplemental jurisdiction of district courts, means jurisdiction in first instance over viable lawsuits, without regard to parties to be joined later; original jurisdiction presupposes viable lawsuit".

Defendants next attempt to justify removal, fabricated a "federal question" was under Title 29 U.S.C.A., Section 1132. The court's error in not examining the (Notice) petition for removal promptly, the court would have recognized this jurisdictional defect and the total lack of any referral to this statute in Petitioner's civil cause of action.

Defendants and the United States District Court again, looked beyond the "four corners" of

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Petitioner's complaint. Quoting Madsen vs. Prudential Federal Savings & Loan Assoc. 635 F. 2d 797 and Gulley vs. First National Bank 299 U.S. 109, 113, 57 S. Ct. 96, 81 L. Ed. 70, "the federal controversy must be 'disclosed upon the face of the complaint unaided by the answer or by the petition for removal' ." Nowhere on the face of Petitioner's cause of action, can any reference be assumed or presumed as to Title 29 U.S.C.A., Section 1132.

Finally, during the course of Petitioner's denial of due process and equal protection of the law, to secure remand to state court, Petitioner, upon information and belief discovered that the United States District Court for the Western District of North Carolina, Charlotte Division, may not have properly obtained exclusive jurisdiction to adjudicate any set of facts deem it civil or criminal, pursuant to clause 17, Section 8, Article 1 of the Constitution of the United States of America, Title 40 U.S.C.A., Section 255, and North Carolina General Statute, G.S. 104.

Petitioner could find no evidence or proof in the public record, of title to the property allegedly owned by the United States of America, authorizing the existence of the United States District Court at the physical courthouse located at 401 W. Trade St., Charlotte, North Carolina.

The above mentioned Constitutional Article, and federal and North Carolina statutes describe in

detail the procedure in which the United States must follow in order to obtain exclusive jurisdiction to adjudicate any civil or criminal matter. If it can be proven that an error exists in that procedure, all the other issues presented by Petitioner would become moot.

Arguendo, if on the other hand it is proved that the United States of America, by and through the United States District Court, Charlotte, North Carolina, has exclusive jurisdiction pursuant to clause 17, Section 8, Article 1 of the Constitution of the United States of America, Title 40 U.S.C.A., Section 255, and N.C.G.S. 104, the said court would continue to lack subject matter jurisdiction pursuant to Title 28 U.S.C.A., Section 1331, 1332, 1367, 1441, and Title 29 U.S.C.A., Section 1132.

The statutes created by the Congress could create confusion, wherein Title 28 U.S.C.A., Section 1446 (c) (4) states "The United States district court in which such notice is filed **shall examine the notice promptly**. If it clearly appears on the face of the notice and any exhibits annexed thereto that removal should not be permitted, the court shall make an order for summary remand."

Whereas, Title 28 U.S.C.A., Section 1447 (c) states in part "A motion to remand the case on the basis of any defect in removal procedure must be made within thirty days after the filing of the notice of

removal under Section 1446 (a). **If at any time before final judgment** it appears that the district court lacks subject matter jurisdiction, the case shall be remanded....."

Petitioner realizes that under the doctrine of separation-of-powers, only Congress has the authority to correct the apparent conflict, double meaning, and ambiguous wording between the two statutes mentioned above, but correction seems obvious and the Supreme Court of the United States should rule on the ambiguity of the two statutes.

In Black's Law Dictionary Sixth Edition, ambiguity is defined as "doubtfulness; doubleness of meaning. Duplicity, indistinctness, or uncertainty of meaning of any expression used in a written instrument. Want of clearness or definiteness; difficult to comprehend or distinguish; of doubtful import."

"Ambiguity exists if reasonable persons can find different meanings in a statute, document, etc." Laskaris vs. City of Wisconsin Dells Inc., App., 398 N.W. 2d 67, 70, 131 Wis. 2d 525; "when good arguments can be made for either of two contrary positions as to a meaning as to a term or a document," Atlas Ready-Mix of Minot, Inc. vs. White Property Inc., N.D. 306 N.W. 2d 212, 220.

CONCLUSION

From the face of Petitioner's cause of action, the defendants clearly could not justify removal of Petitioner's cause of action from the Superior Court of Mecklenburg County, North Carolina, to the United States District Court for the Western District of North Carolina.

Defendants' petition for removal was clearly contrary to all well established law and procedures of due process. The United States District Court's acceptance of the removal petition and the endorsement by the United States Court of Appeals, Fourth Circuit, sustaining the removal, is further error of well recognized maxims of due process and equal protection of the law.

Since an argument could be made as to the ambiguity between Title 28 U.S.C.A., Section 1446 (c)(4) and Section 1447 (c), such ambiguity should be addressed and corrected by the Supreme Court of the United States.

From the inception of the removal to the United States District Court by the defendants, such removal was not justified and foreclosed by the lack of subject matter jurisdiction by the United States District Court.

Petitioner respectfully requests The Honorable Supreme Court of the United States to grant Petitioner's Petition for Writ of Certiorari, and

correct the substantial errors of due process and equal protection of the law denied Petitioner.

Petitioner further respectfully requests The Honorable Supreme Court of the United States to clarify the ambiguity existing between Title 28 U.S.C.A., Section 1446 (c) (4), and Section 1447 (c).

Respectfully submitted by:

John D. Goelz

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State of North Carolina)
) ss
County of Mecklenburg)

Before me a Notary for the State of North Carolina did appear John D. Goelz, who did affirm to the foregoing document this 23rd day of October, 2001.

Notary "Seal"
My commission expires 7/18/05

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Appendix (C)
Decision of the United States Court of Appeals for the Fourth Circuit Order denying re-hearing en banc.....App. 10-11

"APPENDIX A"

In the United States District Court
for the Western District of
North Carolina, Charlotte Division
3:99-CV-413-MU

John D. Goelz
Plaintiff,

vs.

The Paul Revere Life
Insurance Company
Defendant,

Filed
Charlotte,NC
Dec. 21, 2000
U.S. District Court
W. Dist of NC

ORDER

This matter is before the court upon Defendant's Motion to Dismiss for Failure to Comply with Discovery Order and Failure to Prosecute, filed October 16, 2000. The pro se Plaintiff has failed to file a response and has made it abundantly clear that he refuses to acknowledge the jurisdiction of this court and participate in this litigation.

FACTS

John Goelz ("Goelz") filed his Complaint on or about September 3, 1999 in the Superior Court of Mecklenburg County, North Carolina. Goelz's lawsuit relates solely to his purported entitlement to disability benefits under an insurance policy, due to an alleged back condition. On October 8, 1999, Defendant, The Paul Revere Life Insurance Company ("Revere") timely filed a Petition for Removal. On November 3, 1999, Goelz filed a Motion to Remand on the grounds of lack of subject matter jurisdiction, which the court denied on March 13, 2000.

On February 22, 2000, and before the court ruled upon Goelz's Motion to Remand, Goelz petitioned the Court of Appeals for the Fourth Circuit through a Writ of Mandamus for an Order vacating all prior orders of this court. As the basis for the relief requested, Goelz raised the argument that this court does not have jurisdiction over this action because the United Sates government does not own title to the land on which the Western District of North Carolina (Charlotte Division) courthouse is located. On March 14, 2000, the Fourth Circuit denied Goelz's petition, stating that Goelz should await this court's decision on his Motion to Remand, and that Goelz has another remedy, namely to appeal any unfavorable final district court decision.

On March 23, 2000, Goelz petitioned the Fourth Circuit for a rehearing en banc of his Writ of Mandamus, asserting the same jurisdiction argument. On April 21, 2000, the Fourth Circuit

denied Goelz's petition for rehearing. On or about June 27, 2000, Goelz applied to the Fourth Circuit pursuant to a Writ of Praecipe and Injunction, seeking to bar this court from further action until this court proves that it has jurisdiction. The Fourth Circuit, for a third time, denied Goelz's Writ , stating, again, that Goelz had done all that was necessary to preserve his jurisdictional objections.

On May 18, 2000, Revere served Goelz with its initial set of discovery requests: Defendant the Paul Revere Life Insurance Company's First Request for Admissions, Defendant The Paul Revere Life Insurance Company's First Set of Interrogatories and Defendant Paul Revere's First Request for Production of Documents (the "Discovery Requests"). Goelz refused to respond to the Discovery Requests. After attempting in good faith to obtain discovery responses from Goelz, Revere moved the Court, on August 28, 2000, for an Order compelling Goelz to respond to its Discovery Requests. By Order filed September 6, 2000, the court directed Goelz to respond to Revere's Discovery Requests, and included a notice to Goelz pursuant to Roseboro v. Garrison, 528 F. 2d 309, 310 (4th Cir. 1975).

IT IS THEREFORE ORDERED that pursuant to Rule 37 of the Federal Rules of Civil Procedure, the court hereby directs Plaintiff to respond fully to Defendant's

pending discovery requests within 20 days of the entry of this Order. The Plaintiff is hereby Warned that failure to comply may result in the dismissal of his lawsuit with prejudice.

In response to, and in spite of, the court's Order, Goelz again informed Revere and the court that he refuses to respond to Revere's Discovery Requests. In a pleading entitled "Refusal for Fraud, F.R.C.P. Rule 9 (b)," filed with the court on September 15, 2000, Goelz states that he "is refusing for fraud the alleged Order of Graham C. Mullen dba alleged Chief Judge, filed on September 6, A.D., 2000." In an accompanying Affidavit, Goelz accuses the court and counsel for Revere of committing certain criminal acts, including extortion, blackmail, mailing threatening communications, and conspiracy. In willful disobedience to the court's September 6 Order, Goelz still has not served responses to Revere's discovery requests.

DISCUSSION

The Fourth Circuit has directed that district courts consider four factors in deciding whether to impose the sanction of dismissal with prejudice uner Rule 41 (b) for failure to prosecute. Herbert v. Saffell, 877 F. 2d 267 (4th Cir. 1989). These factors are

1. the degree of personal responsibility of the plaintiff;
2. the amount of prejudice caused to the defendant;
3. the existence of a drawn out history of deliberately proceeding in a dilatory fashion; and
4. the existence of sanctions less drastic than dismissal.

Id. At 270

Consideration of these four factors mandates dismissal of Goelz's action with prejudice. Goelz is a practicing dentist in the State of North Carolina. As such, he is a man of letters with considerable education. He has affirmatively and unequivocally refused to proceed with this action. Goelz refused to cooperate in the Initial Attorney's Conference. He failed to respond to the Motion to Dismiss of Revere's former co-defendants despite this court's Roseboro notice. Counsel for Revere attempted without success to obtain discovery responses from Goelz without judicial intervention. Even after judicial intervention, Goelz steadfastly refuses to respond to Revere's Discovery Requests. Rather than attempt to comply or proffer a legitimate reason for noncompliance, Goelz has exhibited blatant disregard for a direct and explicit court order. Accordingly, Goelz has a high degree of personal responsibility in this matter.

Furthermore, Revere is highly prejudiced by its inability to defend this case due to Goelz's failure to

litigate and respond to discovery. Revere's Discovery Requests are relevant and material to this action, seeking basic information relating to Goelz's purported disability. Revere is effectively estopped from preparing its case by Goelz's refusal to respond. Revere's right to proceed in federal court with the defense of a lawsuit brought against it is infringed by Goelz's actions and is prejudicial to Revere.

Goelz has exhibited a history of dilatory practices in this action. He unsuccessfully petitioned the Fourth Circuit three times to consider his jurisdictional arguments. After his first petition, the Fourth Circuit informed Goelz that his jurisdictional argument had been preserved and may be raised after final judgment; yet, Goelz chose to ignore the Fourth Circuit and continued to file interlocutory appeals raising the same argument, causing needless delay. Goelz's latest Affidavit, "served" on the Chief Justice of the Supreme Court and Senator Robert Byrd of the House Judiciary Committee, provides the most recent example of Goelz's dilatory tactics. That Affidavit not only raises the same jurisdiction arguments which the Fourth Circuit rejected three times, but goes non to allege that this court is a "fraud" and conspired with counsel for Revere to commit acts of extortion, blackmail, and other criminal violations against Goelz all while, Revere Discovery Requests were not and have not been answered.

This action has been pending in the Western District of North Carolina since October 8, 1999. Given Goelz's propensity for ignoring the court, and submitting frivolous pleadings (including formal and informal petitions to the Fourth Circuit, the Supreme Court, and the House Judiciary Committee), it is unlikely that an alternative sanction – such as fines, a contempt citation, or further warnings – will result in Goelz taking steps to move this case forward. Goelz has made it clear that he would not recognize the court's authority to impose such sanctions in the first place. Moreover, monetary sanctions would likely result in further allegations from Goelz of extortion and blackmail, and encourage submission of further baseless pleadings in this action.

In light of the foregoing, the court finds that its only alternative is the sanction of dismissal with prejudice for failure to prosecute. Accordingly, the court finds it unnecessary to address Defendant's Motion to Dismiss with regard to Plaintiff's failure to comply with discovery order.

IT IS THEREFORE ORDERED that Defendant's Motion to Dismiss is hereby Granted and this matter is hereby DISMISSED WITH PREJUDICE.

This 21st day of December, 2000.

/s/ Graham C. Mullen
GRAHAM C. MULLEN, CHIEF JUDGE
UNITED STATES DISTRICT COURT

App. 8

"APPENDIX B"

JUDGMENT

FILED June 20, 2001

UNITED STATES COURT OF
APPEALS for the Fourth Circuit

No. 01-1136
CA-99-413-3-MU

JOHN D. GOELZ
Plaintiff - Appellant

v.
THE PAUL REVERE LIFE
INSURANCE COMPANY
Defendant - Appellee
and
PROVIDENT COMPANIES,
INCORPORATED, a/k/a The Paul Revere
Life Insurance company; PROVIEDNT LIFE
& ACCIDENT INSURANCE COMPANY;
PROVIDENT COMPANIES,
INCORPORATED, their agents and assigns
Defendants

Appeal from the United States District Court for the Western District of North Carolina, Charlotte Div.

In accordance with the written opinion of this Court filed this day, the Court affirms the judgment of the Distict Court.

/s/ Patricia S. Connor
Clerk

App. 10

"APPENDIX C"

UNITED STATES COURT OF
APPEALS for the FOURTH CIRCUIT

Filed August 8, 2001

No. 01-1136
CA-99-413-3-MU

JOHN D GOELZ
Plaintiff -Appellant

v.
THE PAUL REVERE LIFE
INSURANCE COMPANY
Defendant, Appellee
and
PROVIDENT COMPANIES,
INCORPORATED, a/k/a The Paul Revere
Life Insurance Company; PROVIDENT LIFE
& ACCIDENT INSURANCE COMPANYL
PROVIDENT COMPANIES,
INCORPORATED, their agents and assigns
Defendants

On Petition for Rehearing En Banc

The appellants' petition for rehearing en banc was submitted to this Court. As no member of this Court requested a poll on the petition for rehearing en banc,

IT IS SO ORDERED that the petition for rehearing en banc is denied.

For the Court,

/s/Patricia S. Connor
Clerk